IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2006

CORAM

THE HONOURABLE MR. JUSTICE K.MOHAN RAM

W.P.No.6822 of 1998 and
WMP No.10387 of 1998

Varadapillai .. Petitioner

-Vs-

1. The Collector
Villupuram District
Villupuram.

2. The District Revenue Officer
Villupuram.

3. The Special Tahsildar
(Adi-Dravida Welfare)
Gingee .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records of the respondent in Award No.14/97-98, in Na Ka A/1324/96 dated 21.03.1998 quash the same and forbear the respondents from in any manner acquiring the petitioner's lands.

For Petitioner : Mr. P.Srinivas
For Respondents : Mr. M.Dhandapani, A.G.P.

- - -

O R D E R

The above writ petition has been filed for the issuance of a writ of certiorarified mandamus to call for the records of the respondent in Na.Ka A/1324/96 dated 21.03.1998 and quash the Award No.14/97-98 and and forbear the respondents from in any manner acquiring the petitioner's lands.

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2. The petitioner challenges the impugned award on the following grounds:-

> "The third respondent has himself proceeded to acquire the lands without any reference to the District Collector and the Impugned Orders do not at any point speak about the delegation of the Power to carry out the proceedings. The very scheme of the Act has been violated in that the Collector has to initiate the proceedings for the acquisition of the lands and the Collector having decided to acquire the lands can then delegate the powers to the Subordinates for the purpose of carrying out the Ministerial Functions and for conducting the enquiry under the Section 4(2) of the Act. From a reading of the impugned order it can be seen that the proceedings of the third respondent had been sent to the Collector for ratification alone and that too no ratification had been received. Further the references cited by the third respondent as having communicated to the Collector have only been acknowledged by the District Revenue Officer and not by the Collector. Therefore the same shows the illegality in the process".

3. In the counter affidavit filed by the third respondent in page-2 it is stated as follows:-

> "The third respondent that is the Special Tahsildar (ADW), Gingee, has been authorised and asked to submit 4(2) proposal for the above Land Acquisition in District Revenue Officer's Ref.M1/15558/97, dated 24.09.1997. Accordingly the Special Tahsildar (ADW) after publishing the notice in Form No.I and intimating the fact of Land Acquisition issued Notice on 01.07.1997. The 4(2) enquiry was conducted on 24.10.1997 at Panchayat Union Elementary School at Marur Village after issuing the notice to the land owner".

In paragraphs 8 and 9 of the counter affidavit it is further stated as follows:

> 8. ..... The respondent III that is Special Tahsildar (ADW) Gingee, has been properly permitted to proceed with Land Acquisition proceedings in this case by the Collector and he

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has been properly delegated. There is no chance to the petitioner to aware all these official routine".

9. ..... The acts and functions of the Respondent III are all on the legal authorisation made to him by the Collector of the District who has been empowered to discharge his function for the acquisition and even for this making of authorisation to any person by virtue of Rules made therein. There are no violation or contravency in adopting the procedure and Rules to make this acquisition by the respondents."

Apart from the above averments in the counter affidavit, the counter affidavit is silent as to when the third respondent sent his report containing his recommendations on the cause shown by the land owner and when the decision was taken by the District Collector and as to when the notice under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (hereinafter referred to as "the Act") was published in the District Gazette.

4. Heard Mr. P.Srinivas learned counsel for the appellant and Mr.M.Dhandapani learned Additional Government Pleader for the respondents.

5. The learned counsel for the petitioner by referring to the above averments contained in the affidavit and the averments made in the counter affidavit submitted that the provisions of the Act have been given a complete go-by by the respondents herein and the District Collector, who is the competent authority to pass the order on the recommendation made by the third respondent, has not passed any orders expressing his satisfaction that the land is required for the purpose of any Harijan Welfare Scheme. The learned counsel for the petitioner by inviting the attention of this Court to the following contents contained in the award passed by the third respondent in Na Ka A/1324/96 dated 21.03.1998,

மேற்கண்டவாறு நில ஆர்ஜிதம் செய்ய தமிழ் நாடு நில எடுப்புச் சட்டம் 31/78 பிரிவு 4(2)ன் கீழாக அறிக்கை இவ்வலுவலக ந.க.அ/ 1324/96, நாள் 22.07.1997-ல் மாவட்ட ஆட்சியர் அவர்களுக்கு அனுப்பப்பட்டுள்ளது. இதனை ஒப்புதல் செய்து விழுப்புரம் மாவட்ட வருவாய் அலுவலர் அவர்களின் ந.க.எம்1.15555/97, நாள் 24.09.1997-ல் அனுமதி வழங்கப்பட்டுள்ளது. இதன்படி 4(2) விசாரணை 24.10.1997 அன்று நடந்த படிவம்-1 நோட்டீசு 07.10.1997-ல் எனது முன்னவரால் ஒப்புதல் செய்து நில உரிமையாளர்களுக்கு நோட்டீசு சார்வு செய்யப்பட்டுள்ளது. இதன்படி 4(2) விசாரணை 24.10.1997 அன்று மரூர் கிராம ஊராட்சி ஒன்றிய ஆரம்ப பள்ளியில் நடத்தப்பட்டது. விசாரணை முடிவுற்று 4(1)

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முன்மொழிவு இவ்வலுவலக ந.க.அ/1324/96, நாள் 28.10.97-ல் விழுப்பு ரம் மாவட்ட ஆட்சியர் அவர்களுக்கு அனுப்பப்பட்டுள்ளது. இதனை ஏற்று மாவட்ட வருவாய் அலுவலர் அவர்களின் ந.க.எண்.1/15555/97, நாள்.11.11.1997 அங்கீகாரம் அளித்து மாவட்ட அரசிதழில் பிரசுரம் செய்யவும் உத்திரவிட்டுள்ளார். இந்த 4(1) முன்மொழிவு அறிவிக்கை விழுப்புரம் மாவட்ட அரசிதழ் எண்.50எச் நாள்.24.11.1997-ல் பிரசுரம் செய்யப்பட்டுள்ளது.

submitted that the report sent by the third respondent pursuant to the enquiry conducted under Section 4(2) of the Act has been considered only by the District Revenue Officer and not by the District Collector as contemplated under the Act and on that ground itself the entire proceedings are liable to be quashed. The learned Additional Government Pleader has not produced the records and he is not in a position to place any materials before this Court to show that on the report sent by the third respondent containing his recommendations on the cause shown by the petitioner-land owner the District Collector took the decision and pursuant thereto the notification was published in the District Gazette.

6. The learned Additional Government Pleader submitted that when the award itslef has been passed the writ petition cannot be entertained but he fairly submitted that even as per the averments contained in the counter affidavit possession has not been taken from the petitioner.

7. The above contention of the learned Additional Government pleader is liable to be rejected as the prayer in the writ petition itself is to quash the award.

8. The learned counsel for the petitioner placed reliance on the decision reported in 2004 (3) C.T.C. 261 (K.V.Purushothama Naidu Vs. The District Collector, North Arcot Ambedkar District, Vellore and another), and in paragraphs 8 and 9 it was observed as follows:-

> "8. In The Land Acquisition Officer and Special Tahsildar (LA) Vs. R.Manickammal, 2002 (2) C.T.C.1, it was observed as follows:
>
> > "State Act is completely different as Government intervention is not at all contemplated - Collector is appropriate authority to decide acquisition of land - Provisions of State Act is absolute - Decision to acquire land was to be exercised only by Collector by application of mind independently - Legislature did not reserve any power to State Government to have supervisory role as

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> is provided under Central Act - When legislature names particular authority to exercise power, only that authority has to exercise authority and nobody else".

In that case, the Government interfered with the decision of the Collector that it was not desirable to acquire the land and it was held that the Government could not do so since the Governmental intervention was unwarranted.

9. In the present case, it is obvious that the notice does not say that the Collector is satisfied. From the mere fact that the words refer to the notice being one under Section 4(1), the Court cannot presume that the Collector was satisfied. When the section mandates that the Collector should be satisfied, then there should be a record of the satisfaction of the Collector. If the notice does not indicate such satisfaction, then at least the records should show that the Collector is indeed satisfied with the recommendations of the Special Tahsildar that the acquisition was necessary".

9. In 2006 (4) C.T.C. 609 (R.Pari Vs. The Special Tahsildar, Adi-Dravidar Welfare, Devakkottai (Pasumpon Muthuramalinga Thevar District) and another, a Full Bench of this Court in paragraphs 6 and 8 of the decision has observed thus:-

> "6. The statutory provisions thus make it clear that the District Collector is the authority to exercise the power of eminent domain. As per Section 4(1), it is required that the Collector should be satisfied that the land is required for the purpose of any Harijan Welfare Scheme. Notice is required to be published in the District Gazette regarding the decision of the Collector to acquire the land. However, before taking such action, under Section 4(1), the District Collector or any officer authoised by the District Collector is required to call upon the owner or any other person, who, in the opinion of the District Collector or authorised officer may be interested to show cause why such land should not be acquired. Under Section 4(3)(a), after the cause is shown, the District Collector, where notice has been issued by him, may pass such orders as he may deem fit. However, under Section 4(3)(b), where such notice is issued by the authorised officer, such officer is required to make a report to the

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District Collector containing his recommendations on the cause shown, for the decision of the District Collector and the District Collector may pass such orders as he may deem fit after considering such report.

8. From a combined reading of the provisions contained in Section 4, Rule 3 and the Form-I, it is thus apparent that the notice to show cause can be issued either by the District Collector or by the authorised officer. Where such notice is issued by the District Collector, all subsequent proceedings are continued before him and ultimately the Collector takes a decision on the basis of enquiry held by him. However, where such notice is issued by the authorised officer, the enquiry is conducted by such officer, who is thereafter required to make a report containing his recommendations on the cause shown by the owner and the decision is required to be taken by the District Collector".

10. The above decisions make it crystal clear that the decision to acquire land has to be taken only by the District Collector after due application of mind independently and he is the appropriate authority to decide the acquisition of a land. As observed in 2002 (2) C.T.C. 1 (referred to supra) when legislature names particular authority to exercise power, only that authority has to exercise the power to acquire the land and nobody else and therefore the contention of the learned counsel for the petitioner that none of the proceedings have been initiated or authorised by the District Collector has to be accepted. The District Revenue Officer has admittedly passed the order on the recommendations made by the third respondent after completing the enquiry under Section 4(3)(b) of the Act. The District Revenue Officer is not the competent authority under the Act to pass orders on the report containing the recommendations made by the third respondent.

11. The above view of mine is supported by the following observation made in paragraph 8 of the decision rendered in the case of Jainabi Vs. The State of Tamil Nadu and reported in 2006 (5) C.T.C. 163 which reads as follows:-

"8. On the above discussions, we hold that the District Collector is the only competent authority to exercise the power under Section 4(1) of the Act for issue of notification, and such power cannot be delegated to any other officer including the Additional Collector in whose name the

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notification has been issued. We also hold that the power under Section 16 can be invoked by the Government only in respect of the power conferred or any duty imposed on them and such power cannot be extended by delegating the power of the District Collector to issue the notification under Section 4(1) to the Additional Collector".

12. Therefore when the entire proceedings are vitiated and when there is no valid 4(1) notification the award passed pursuant to an invalid 4(1) notification is also invalid in the eye of law and therefore the same is liable to be quashed and accordingly the same is quashed.

13. For the reasons stated above, the writ petition is allowed. However there will be no order as to costs. However it is made clear that if there is any real and genuine need to acquire the lands of the petitioner then it is open to the competent authorities under the Act to acquire the same after strictly following the provisions of the Act. Consequently, the connected WMP is closed.

srk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Collector, Villupuram District, Villupuram.
2. The District Revenue Officer, Villupuram.
3. The Special Tahsildar (Adi-Dravida Welfare), Gingee.

+ one cc to Mr.P. Srinivas, Advocate sr no. 52665

GG(CO)
NM(21.11.2006)

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